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08/533,589	09/25/95	PALLEY	30-3744

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EXAMINER

KOPSIDAS, N

ART UNIT

PAPER NUMBER

3207

DATE MAILED: 12/05/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/533,589

Applicant(s)
Palley et al.

Examiner
Niki M. Kopsidas

Group Art Unit
3207



☒ Responsive to communication(s) filed on Sep 2, 1997

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-117 is/are pending in the application.

Of the above, claim(s) 7, 39-41, 58-73, and 77-117 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-6, 8-38, 42-57, and 74-76 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Sep 25, 1995 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 17,20,22

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

1. Claims 7, 39-41 and 58-73 and 77-117 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention and/or species. Note, claims 39-41 do not read on species II, claims 39-41 appear to be drawn to a different species. Therefore, claims 39-41 are withdrawn from further consideration.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the rigid support structure of species II must be shown or the feature canceled from the claims. No new matter should be entered.

Specification

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

4. The following is a quotation of 37 CFR 1.71(a)-(c):

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

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(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

(c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

The specification is objected to under 37 CFR 1.71 because it does not adequately describe the frame of species II.

Claim Rejections - 35 USC § 112

5. Claims 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The structure of the band of the rigid support frame is unclear. From the drawings and specification the support structure does not appear to have a band or be in the shape of band. Why is it considered to be a band?

Double Patenting

6. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent.

In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619

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(CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 12-32, 34-36, 43-57 and 74-76 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 5,545,455 (Prevorsek et al.) in view of Lewis (U.S. 0,674,009). Prevorsek et al. disclose the claimed device except for the specific structure of the container, although, Prevorsek et al. do disclose that the patented invention can be used for containers and other conventional purposes. Lewis discloses that it is known in the art to construct a container from three separate telescoping bands of material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the invention of Prevorsek et al. in the form of the container of Lewis, in order to make a blast resistant container which is easy to assemble. The outermost band of the Lewis container is considered to be "substantially seamless".

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-6, 33, 37, 38, 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis (U.S. 0,674,009). The term "band" is defined in the *Webster's II New Riverside University Dictionary* as "a thin strip of flexible material for encircling and binding on object or for holding several objects together". In view of this definition elements A, B and C of Lewis are considered to be bands. Element C is the first band; element B is the second band and element A is the third band. Each wall of the completed container has a thickness "substantially equivalent" to the sum thickness of two of the bands. To the degree applicant's bands are considered "substantially polygonal" in cross section, the bands of Lewis are considered "substantially polygonal" in cross section. Both bands B and C comprise a plurality of substantially rectangular surfaces in series, which are nested within another band. The outermost band of the Lewis container is considered to be "substantially seamless".

Regarding claims 37, 38, 42, figure 1 shows the closure A which covers the access opening formed by band C and flaps or doors B¹.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Rosenbloom, Jr. et al. (U.S. 4,290,468). Lewis discloses the claimed device except for rigid support

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frame. Rosenbloom, Jr. et al. disclose that it is known in the art to provide a rigid support frame within an inner sleeve. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Lewis with a rigid support frame as taught by Rosenbloom, Jr. et al., in order to increase the strength of and provide additional support for the container. Rosenbloom, Jr. et al. discloses that the rigid support frame can be made of metal.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Rosenbloom, Jr. et al. as applied to claim 9 above, and further in view of Hall (U.S. 4,216,803). The modified container of Lewis discloses the claimed device except for the support structure being wrapped with glass or carbon fibers. Hall discloses that it is known in the art to wrap a metallic band with glass fibers (see col. 2 ln. 16-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Lewis using glass fibers to wrap the metallic band as taught by Hall, in order to strengthen the metallic band without significantly increasing the overall weight of the rigid support structure.

13. Claims 12-32, 34-36, 43-57 and 74-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Prevorsek et al. (U.S. 5,545,455). Lewis discloses the claimed device except for the band material. Prevorsek et al. disclose that it is known in the art to make a container from layers comprising networks of fibers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Lewis with the fibrous material of Prevorsek et al., in order to make a container with improved penetration resistance. The fibers of Prevorsek et al. are considered to be "substantially continuous" in length (see col. 8 ln. 17-45 of Prevorsek et al.) and to the degree that applicants' species II bands are "substantially seamless" the bands of Lewis are considered to be "substantially seamless". Prevorsek et al. discloses that the fibers have a tenacity of at least 15

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grams/denier and a tensile modulus of at least 300 grams/denier (see col. 7 ln. 14-22). In col. 7 ln. 62 - col. 8 ln. 16, Prevorsek et al. disclose that aramid fibers and glass fibers may be used to form the fibrous layers, and in col. 7 ln. 10-11 Prevorsek et al. disclose that polyolefin fibers may be used in the fibrous layer. The claimed matrix is disclosed in col. 8 ln. 17 - col. 9 ln. 38 of Prevorsek et al.; in particular on line 3 of col. 9, a polyurethane matrix is disclosed.

The modified container of Lewis does not specifically disclose the specific percent of the fibers which are considered to "substantially continuous". It would have been obvious to one having ordinary skill in the art at the time the invention was made to make a certain percent of the fibers substantially continuous depending on the what strength and rigidity is desirable for the container and, since the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984)

The modified container of Lewis is polygonal in cross section and would inherently deform if the blast is great enough. The container deformation is dependant on the strength of the blast. Regarding claims 74-76, the inner and intermediate band of the modified Lewis invention comprise the container and the outer band is the strip.

Response to Arguments

14. Applicant's arguments filed September 2, 1997 have been fully considered but they are not persuasive. Upon further consideration, it appears that claims 37, 38 and 42-57 read on species II.

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Therefore, claims 37, 38 and 42-57 are not withdrawn from consideration in this Office Action. However, claims 39-41 remain withdrawn from consideration along with claims 7, 58-73 and 77-117, as being drawn to a non-elected invention.

Regarding the drawing objection, the objection to the specification, and the rejection of the claims under 35 U.S.C. 112, it is the examiners position that there is insufficient support in the specification and the drawings for the frame of the species II container. The drawings must show the claimed invention, which includes a frame for species II, and the specification must specifically describe that the species II container may have a rigid frame. To merely state that a frame may be used in other species does not adequately describe the claimed invention which includes a support frame for species II.

In response to applicants prior art arguments that the outer band of Lewis is not seamless, the newly added limitation that the outermost band is "substantially seamless" is satisfied by the Lewis container, to the degree set forth in the claims. The outermost band of Lewis is considered "substantially seamless".

Applicant also argues that Lewis does not teach a third band which is blast resistant. It is submitted that the third band of Lewis is capable of withstanding blasts having a certain magnitude. Therefore, to the degree set forth in the claims, the Lewis container is considered "blast resistant". Regarding the limitation of claim 33, requiring that the bands are formed of a composite material, the Lewis container is formed of cellular board which can be considered a composite material.

Conclusion

15. Since claims 37, 38 and 42-57 were not considered as drawn to the elected species at the time of the First Office Action, this action is made Non-Final.

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16. In order to reduce pendency and avoid potential delays, Group 3200 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3200 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Kopsidas whose telephone number is (703) 308-1606. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1148.



Niki M. Kopsidas/nmk
Patent Examiner
December 1, 1997



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